

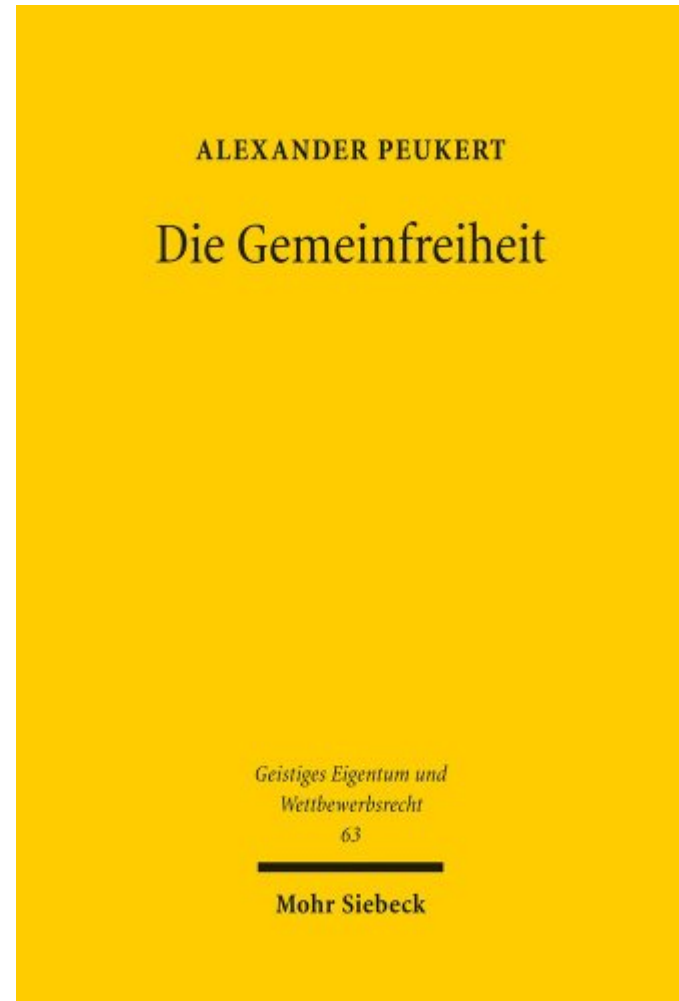
Intellectual Property and the Public Domain
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Reinvigorating the Public Domain

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"The Public Domain: Theory, Function, **Doctrine**"

The legal status of information
not protected by IPR



The meaning and scope of the public domain

- The territoriality of the public domain
- The structural public domain
- The conditional public domain
- The contractual public domain
- The specific public domain

The legal basis of the public domain

- The principle of equal negative liberty
 - Public domain information may be freely used by everyone under equal terms for every lawful purpose, including in particular commercial uses.
 - PD information is owned by no-one.
 - Distinguish collective goods/commons: owned by a community composed of unspecified members

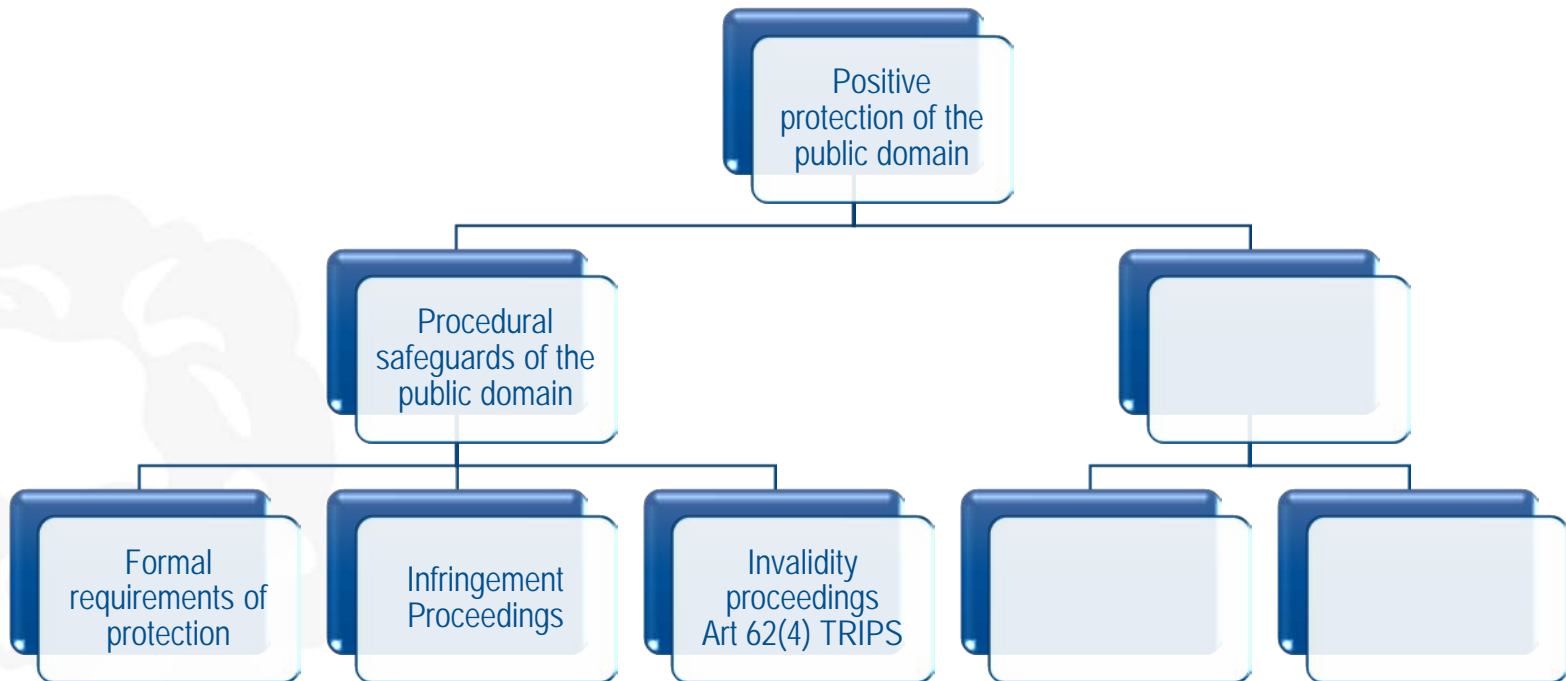
- The problem of a no-rights-conception
 - The significance of individual rights to something in civil and procedural law
- The concept of legally protected freedoms (*Robert Alexy*)

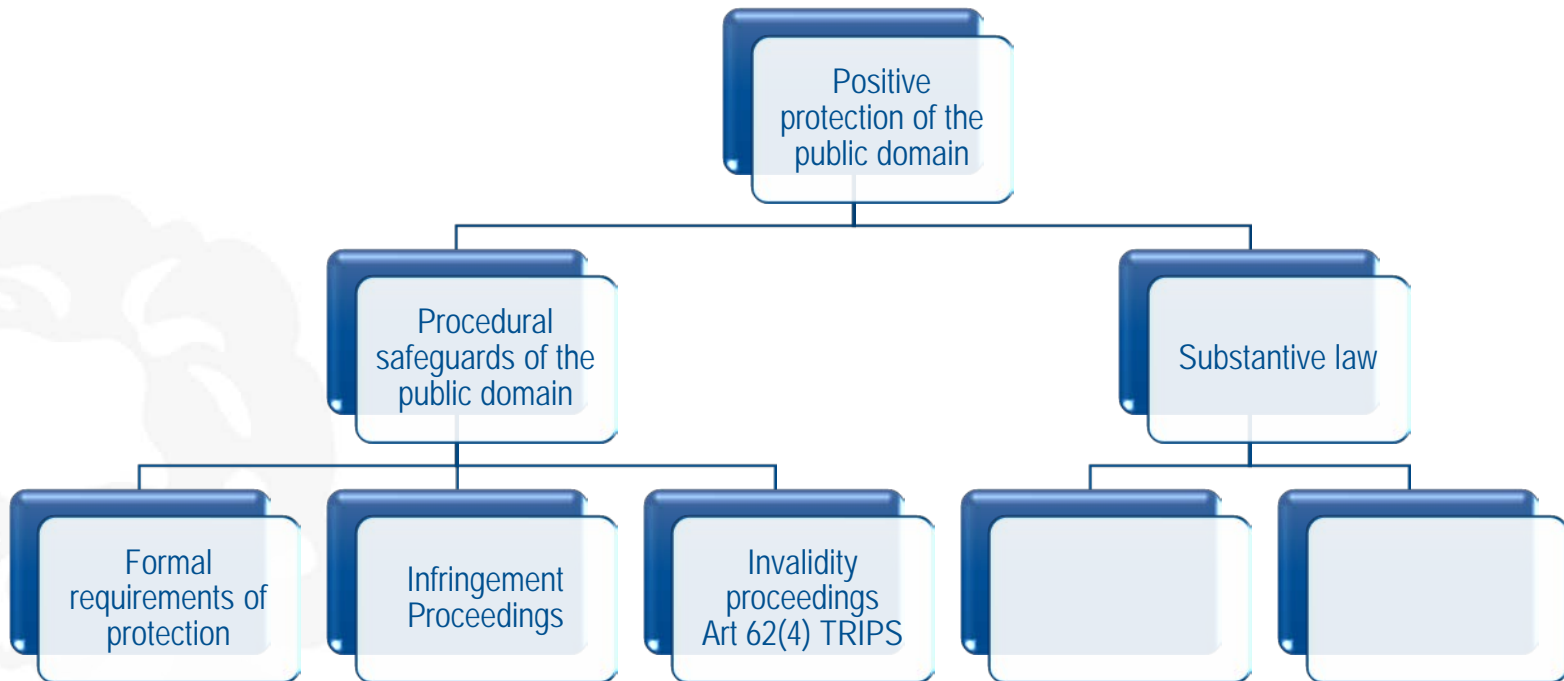
The negative approach: Limitation of IP rights for the sake of the public domain

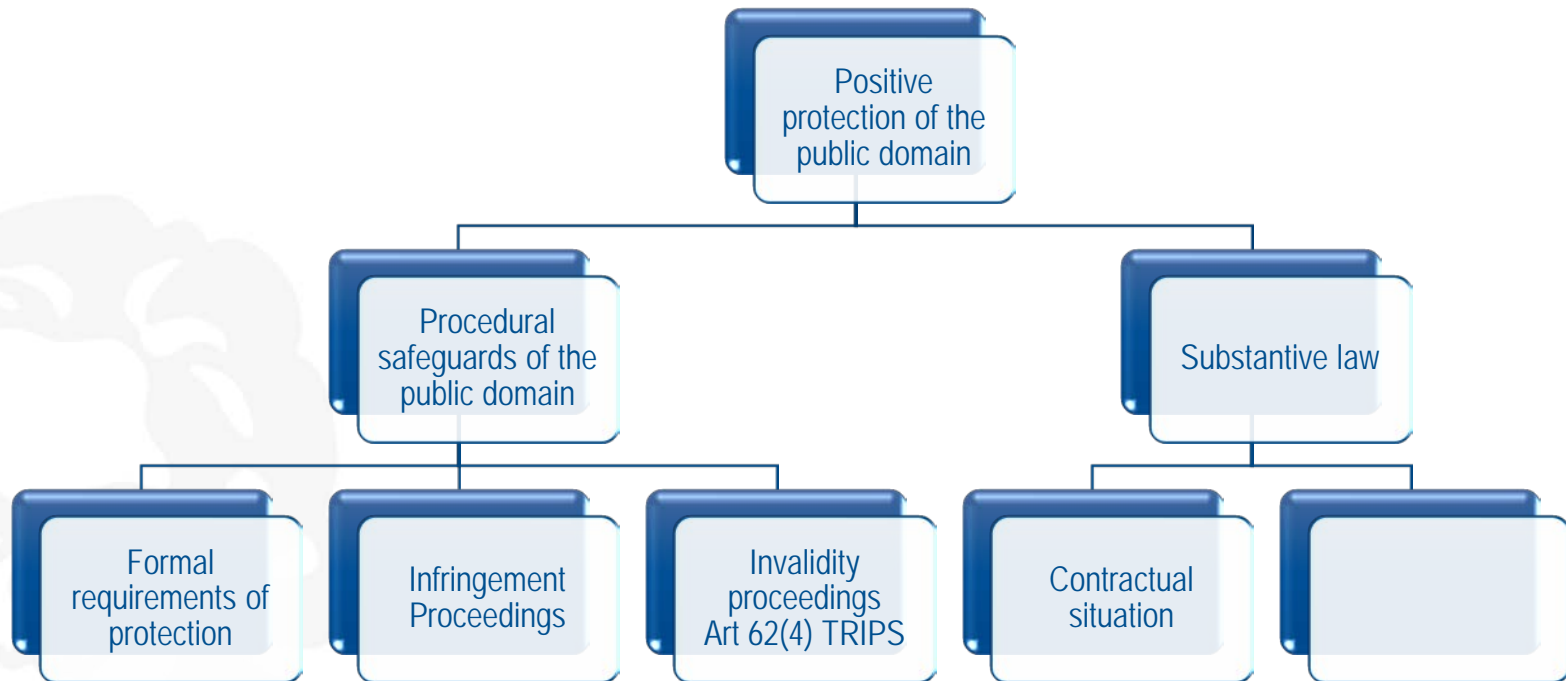
- Addressee: public authorities
- IP rights form an exception to the basic principle of equal negative liberty to use information
 - No extension of exclusivity beyond the statute
 - No restrictive reading of limitations

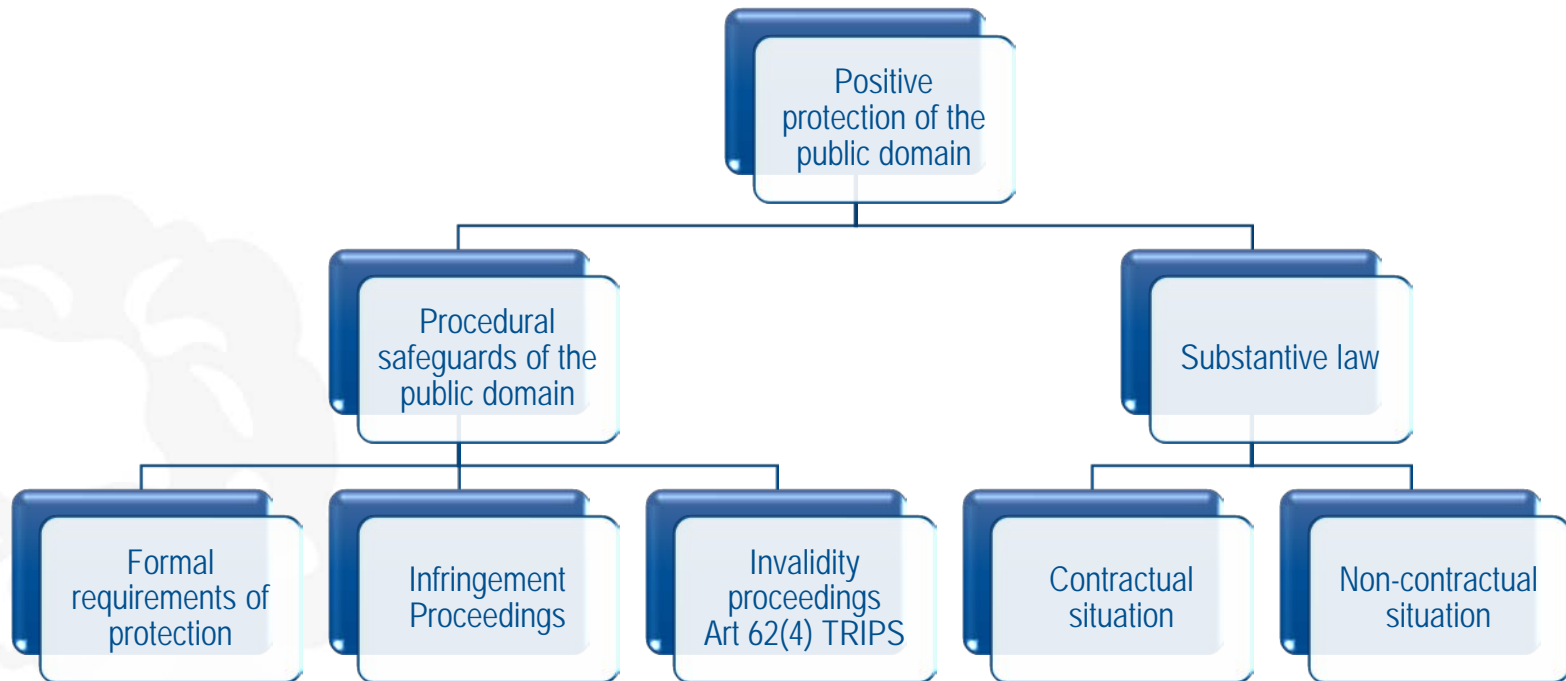
The positive approach: Protection (*Bewehrung*) of the public domain

- Addressee: Private actors claiming exclusivity where there is none
- Beyond property law and theory: the public domain as a legal subject matter









A skeptical conclusion

- The structural asymmetry between IP and the public domain
 - Clearly defined individual rights vs widely dispersed, undefined interests
 - The political economy of IP
 - Legal theory and doctrine
- The improbability of a strong no-rights-regime
 - Openness as a challenge to society